

**MINUTES OF THE REGULAR MEETING OF THE COMMON
COUNCIL OF THE CITY OF JASPER, INDIANA
APRIL 19, 2006**

A meeting of the Common Council of the City of Jasper, Indiana, was held on Wednesday, April 19, 2006 in the Council Chambers of City Hall, 610 Main Street, Jasper, Indiana.

Call to Order.

Presiding Officer Mayor William J. Schmitt called the meeting to order at 7:00 p.m.

Roll Call.

Mayor William J. Schmitt	Present
Councilmembers	
John Schroeder	Present
Bradley Seger	Present
Thomas Schmidt	Present
Ambrose 'Butch' Schitter	Present
Renee Kabrick	Present
Randall Buchta	Absent
Raymond Howard	Present
City Attorney Sandra Hemmerlein	Present
Clerk-Treasurer Juanita S. Boehm	Present

Clerk-Treasurer Juanita Boehm announced that in order to have a quorum for the meeting, a majority of the members of the legislative body must be in attendance. Six of the seven members were in attendance, which constitutes a majority; therefore, there was a quorum for the meeting.

Approval of the Minutes

The following minutes were distributed to and examined by the Council:

1. March 22, 2006 regular monthly common council meeting.
2. March 22, 2006 6:40 p.m. public hearing to consider the petition of Design Institute America Inc. to vacate platted rights-of-way and easements in the East Highlands Addition.
3. March 22, 2006 6:50 p.m. public hearing to consider a proposal to rezone 36.04 acres located south of 3649 W. 150 N from A-1 (Agricultural) to R-R (Rural Residential).

A **motion** was made by Councilmember Ambrose Schitter and seconded by Councilmember Thomas Schmidt to approve the minutes as presented. Motion carried 6-0.

Utility Service Board. Gerald "Bud" Hauersperger, General Manager of Utilities, presented a report of the regular monthly meeting held on April 17, 2006. Copies of the minutes are supplied to each council member.

Smoking Ban Issue. Donna Oeding, representing the Partnership for a Smoke Free Community, presented some options for consideration as they relate to the smoke-free workplace draft ordinance that was modeled after the City of

Bloomington's ordinance and was presented at the October 2005 Common Council meeting. Oeding reported that since that meeting the Partnership committee met with bar and restaurant owners to work towards a compromise or workable agreement. Oeding presented three options that relate to the draft ordinance presented in October. The options were as follows:

OPTION 1 is the comprehensive draft ordinance that was presented in October. It is the Committee's ultimate goal to receive passage of a comprehensive smoke free workplace ordinance in Jasper and the remaining areas of Dubois County.

Add: WHEREAS, under the Americans with Disabilities Act, which requires public places and workplaces to be accessible to disabled persons, impaired respiratory function is a "disability"; and

Change: Section 5.05.010 Definitions

a. Bar means any establishment where a majority of the sales are derived from alcoholic beverages for consumption by guests on the premises and in which the sale of food and the provision of entertainment is merely incidental to the sale of alcoholic beverages.

OPTION 2 is the type ordinance being passed by most communities in Indiana and throughout the United States. This type ordinance only exempts bars and private clubs. Options 1 and 2 are supported by the American Cancer Society and the Indiana Tobacco Prevention and Cessation Coalition.

Add: Section 5.05.010 Definitions

Restaurant: means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering kitchens.

Add: Section 5.05.030 Prohibition of Smoking in Public Places

7. Restaurants

Add: Section 5.05.060 Where Smoking Not Regulated

5. Bars and Private Clubs

OPTION 3 is the compromise between representatives from the Partnership for a Smoke Free Community and the local restaurant and bar owners. It allows smoking in attached bars that are completely enclosed while providing separate ventilation from the remainder of the smoke free establishment..

Add: WHEREAS, the United States Surgeon General has determined the simple separation of smokers and non-smokers within the same air space may reduce but does not eliminate the exposure of non-smokers to secondhand smoke; and

Add: Section 5.05.010 Definitions

Attached Bar: a room or area, located within a restaurant, where the majority of the sales are derived from alcoholic beverages for consumption by guests on the premises and in which the sale of food and the provision of entertainment is merely incidental to the sale of alcoholic beverages.

Add/Change: Section 5.05.030 Prohibition of Smoking in Public Places

7. Restaurants and Private Clubs

23. Attached Bars except as provided in 5.05.060

C. At any time new construction or extensive remodeling of an establishment occurs, the establishment must operate smoke-free with no exemptions.

Delete: Section 5.05.040 Policies Regarding Smoking in Places of Employment

A. It shall be the responsibility of employers to provide a smoke-free workplace for all employees, but employers are not required to incur any expense to make structural or other physical modifications.

Add: Section 5.05.060

5. Bars

6. Attached bars, located within a restaurant, provided it is completely enclosed and separate from the remainder of the smoke free enclosed areas of the facility by solid floor to ceiling walls and doors and/or windows which must remain closed except for entry and exit of persons to and from the attached bar. The attached bar is required to have a separate ventilation system in this area whereby the air from the attached bar is immediately exhausted to the outside in such a way as to prevent reintroduction of smoke into any smoke-free area.

Ms. Oeding stated that their organization's ultimate goal would be to receive passage of Option No. 1, but could accept Option No. 2, which is the type of ordinance that many communities are passing. During discussion it was determined that J.R.'s bar would possibly be the only establishment that would fit the description of a bar. Ms. Oeding summarized Option No. 3 and stated that according to the definition of attached bars, the following establishments would fall into that category, Schnitzelbank, Headquarters, Late Nights, Mac-A-Doo's, Yaggi's, Eastown, Great Wall, Garfields, The Calumet, Millhouse, Snaps, Heichelbechs, Ruby Tuesday, Jumbo Dragon, Applebees and Muddy Water.

Councilmember Bradley Seger asked if any of those establishments already had those capabilities and Ms. Oeding said some were already close to having those requirements. Seger asked why private clubs were exempted in Option No. 2, but not in Option No. 3. Ms. Oeding responded that it was the council's decision to pick and choose what they want in the ordinance. She had just given some ideas. She said Jasper has always been a leader and she would like to see Jasper pass an ordinance just as ordinances have been passed in many other communities.

Councilmember Thomas Schmidt asked if the restaurant owners agreed with the smoke-free plans. Ms. Oeding responded that restaurant owners basically agreed with Option No. 3. Councilmember Renee Kabrick commented that many towns, cities and states are passing smoke-free ordinances and asked if it was feasible for a restaurant to make facility changes when it's possible that a comprehensive smoke-free ordinance might be enforced sometime in the future. Alan Hanselman, owner of the Schnitzelbank Restaurant, said most bar owners would like a guarantee that after an establishment makes structural changes for a partial ban, the City would not change the ordinance to a total ban at a later date.

Councilmember Renee Kabrick said it might not come from the council, but from the State. City Attorney Sandra Hemmerlein stated that the council could not give any guarantee because the members of the council could change.

Councilmember Bradley Seger was concerned that there might be some difficulty in regulating the ordinance. Councilmember Thomas Schmidt stated that many owners are already doing a lot and have made changes. Schmidt surmised that it would be fairer if the county would pass such an ordinance. Ms. Oeding responded that her group would do their best to get such ordinances passed in the other communities if Jasper passed such an ordinance, but it was her understanding that when counties pass ordinances, those ordinances were only in effect in the unincorporated areas of a county.

Shannon Hildebranski, representative of the Indiana Tobacco Prevention and Cessation Association, said that the major health organizations, such as the American Cancer Society, American Lung Association and the American Heart Association do not support an ordinance such as outlined in Option No. 3 because it requires walls and ventilation and it's difficult to enforce. She said her state organization is working towards clean workplace ordinances and exempting restaurants and then phasing in restaurants at a later date. She acknowledged that the State of Indiana is a long way off from passing some sort of smoke-free ordinance. She said their goal is to protect the worker. She said once clauses are within an ordinance, it is much more difficult to remove those clauses than if they were not in the ordinance to begin with and that it is easier to phase in those establishments.

Councilmember Ambrose Schitter stated that it was a question of Freedom of Choice. Ms. Hildebranski responded that it's a public health issue. Councilmember John Schroeder said that most large employers are already smoke-free and he was concerned for the small business owner. He said it was just another regulation being passed on to them and a question of local government taking away people's rights.

Councilmember Raymond Howard asked what kind of time line should be established. City Attorney Hemmerlein responded that an effective date could be written into the ordinance. Alan Hanselman, owner of the Schnizelbank Restaurant, said he liked the idea of 80% closure. Hanselman would also like the rest of the county on board. It was his opinion that it would hurt the Jasper restaurants if the rest of the communities did not have to be smoke-free. He said that restaurants are the only type of business that would be affected. Hanselman preferred to ban smoking in all business except restaurants. Ms. Hildebranski stated that evidence shows that business would increase with such a smoking ban because only 20% of the population smokes.

Hanselman acknowledged that he and other restaurant owners had no problem with a smoke-free ordinance if it was county wide. Councilmember Renee Kabrick suggested an option that would include a comprehensive smoke-free ordinance that started with businesses, excluding restaurants, bars and private clubs, but would phase that segment in later. She said this would allow the county time to catch up.

Donna K. Bryan, 1050 W. 20th Street, Jasper was present. Bryan stated she was very upset because earlier in the evening she had gone to an area restaurant to eat and was seated in the smoke-free area. She said she has asthma and was compelled to leave without eating because some smoking friends of the manager arrived early for a meeting and were seated in the non-smoking area. Bryan went on to say that if the smoking issue is left up to the individual restaurant owners, they may start out by doing the right thing but they may change their mind. Bryan asked the Council members to do the right thing.

Councilmember Bradley Seger **motioned** and Councilmember Ambrose Schitter seconded to recommend that the City Attorney prepare an ordinance that uses the outline for Option No. 3 with the exception private clubs are exempt; use the definition of 100% closure rather than the 80% closure; that the ordinance take effect 90 days after passage; and delete Section C in Option 3 that reads “At any time new construction or extensive remodeling of an establishment occurs, the establishment must operate smoke-free with no exemptions”.

During discussion, Councilmember Renee Kabrick was concerned that some of the restaurants did not have the option of investing money to make the changes, and that it would be better if the whole community went smoke-free.

During further discussion, Councilmembers discussed Section 5.05.030 (C) concerning new construction or remodeling of an establishment. It was decided to eliminate Section C from the ordinance.

Mayor Schmitt then called for the vote. The motion passed 5-1 with Council members Schroeder, Seger, Schmidt, Schitter, and Howard voting in favor and Councilmember Renee Kabrick opposed.

Ordinance No. 2006-10 AN ORDINANCE FIXING A SCHEDULE OF REVISED RATES AND CHARGES COLLECTED BY THE CITY OF JASPER, INDIANA, FROM THE OWNERS OF PROPERTY SERVED BY THE SEWAGE WORKS OF SAID CITY, AND OTHER MATTERS CONNECTED THEREWITH.

Ordinance No. 2006-10 adjusts the wastewater rate

The ordinance was read on first reading on March 22, 2006. Upon motion by Councilmember Ambrose Schitter, seconded by Councilmember Raymond Howard, and approved 6-0, the ordinance was ordered read on second reading by title only. The ordinance was so read. Thereafter, upon motion made by Councilmember Thomas Schmidt, seconded by Councilmember John Schroeder, the ordinance was approved 6-0 on the second reading.

During discussion, City Attorney Hemmerlein stated that there had been two revisions to the ordinance since first reading. Hemmerlein explained that under Section 5, language had been removed regarding the debt service fee and under Section 17, the effective date had been added.

Thereafter upon motion by Councilmember John Schroeder, seconded by Councilmember Thomas Schmidt, and carried 6-0, it was moved to have the ordinance read on third and final reading by title only. The ordinance was so read. Thereafter, on motion made by Councilmember Ambrose Schitter, seconded by Councilmember Bradley Seger, Ordinance No. 2006-10 was approved by a 6-0 vote on the third and final reading.

Ordinance No. 2006-11 AN ORDINANCE TO TRANSFER APPROPRIATIONS FOR THE CITY OF JASPER, INDIANA, FOR THE REMAINDER OF THE FISCAL YEAR ENDING DECEMBER 31, 2006.

Ordinance No. 2006-11 transfers 2006 funds for the balance of the Portersville Road Widening project.

Upon motion by Councilmember Thomas Schmidt, seconded by Councilmember Raymond Howard and approved 6-0, it was moved to read the ordinance for one reading only. Thereafter, on motion made by Councilmember Ambrose Schitter, seconded by Councilmember John Schroeder and approved 6-0, it was moved to have the ordinance read by title only. The ordinance was so read. Thereafter, upon motion made by Councilmember Thomas Schmidt, seconded by Councilmember Bradley Seger, it was moved to pass and adopt Ordinance No. 2006-11. The measure passed 6-0.

Ordinance No. 2006-12 AN ORDINANCE DESIGNATING ALLEYS WHERE VEHICULAR TRAFFIC IS PROHIBITED.

Ordinance No. 2006-12 prohibits vehicular traffic on the southern portion of the alley between Main and Jackson Streets that runs north and south from 8th Street to 9th Street.

Upon motion by Councilmember Raymond Howard, seconded by Councilmember Ambrose Schitter and approved 6-0, it was moved to read the ordinance for one reading only. Thereafter, on motion made by Councilmember Bradley Seger, seconded by Councilmember Thomas Schmidt, and approved 6-0, it was moved to have the ordinance read by title only. The ordinance was so read. Thereafter, upon motion made by Councilmember Thomas Schmidt, seconded by Councilmember John Schroeder, it was moved to pass and adopt Ordinance No. 2006-12. The measure passed 6-0. During discussion, City Attorney Sandra Hemmerlein commented that this was the subject of a public hearing heard earlier this evening.

Ordinance No. 2006-13 AN ORDINANCE REGARDING THE COMMON COUNCIL OF THE CITY OF JASPER, INDIANA.

Ordinance No. 2006-13 updates portions of the Common Council Chapter of the Code book such as the time and place of meetings.

Upon motion by Councilmember Ambrose Schitter, seconded by Councilmember Thomas Schmidt and approved 6-0, it was moved to read the ordinance for one reading only. Thereafter, on motion made by Councilmember John Schroeder, seconded by Councilmember Ambrose Schitter and approved 6-0, it was moved

to have the ordinance read by title only. The ordinance was so read. Thereafter, upon motion made by Councilmember Ambrose Schitter, seconded by Councilmember Bradley Seger, it was moved to pass and adopt Ordinance No. 2006-13. The measure passed 6-0.

Ordinance No. 2006-14 AN ORDINANCE AMENDING ORDINANCE NUMBER 2002-47 ENTITLED AN ORDINANCE REDISTRICTING THE CITY OF JASPER, INDIANA PURSUANT TO I.C. 36-4-6-4 AND REPEALING ALL ORDINANCES IN CONFLICT HEREWITH.

Ordinance No. 2006-14 adds the number designations to each election District that were adopted by the County of Dubois to the district color designations that were previously adopted by the Common Council.

Upon motion by Councilmember Thomas Schmidt, seconded by Councilmember Ambrose Schitter and approved 6-0, it was moved to read the ordinance for one reading only. Thereafter, on motion made by Councilmember Ambrose Schitter, seconded by Councilmember Bradley Seger and approved 6-0, it was moved to have the ordinance read by title only. The ordinance was so read. Thereafter, upon motion made by Councilmember Raymond Howard, seconded by Councilmember Thomas Schmidt, it was moved to pass and adopt Ordinance No. 2006-14. The measure passed 6-0.

Ordinance No. 2006-15 AN ORDINANCE ANNEXING CERTAIN ADJACENT AND CONTIGUOUS TERRITORY INTO THE CORPORATE LIMITS OF THE CITY OF JASPER, INDIANA.

Ordinance No. 2006-15 annexes 36 acres located at the northwest corner of US 231 and SR 162.

The ordinance was introduced upon motion by Councilmember Ambrose Schitter, seconded by Councilmember John Schroeder, and approved 6-0, to read the ordinance by title only on first reading. The ordinance was so read. Thereafter, on motion made by Councilmember Thomas Schmidt, and seconded by Councilmember Ambrose Schitter, Ordinance No. 2006-15 was approved 6-0 on first reading.

During discussion, Mayor Schmitt presented a map of the area and City Attorney Hemmerlein stated that the annexation was 100% petitioned for by the one owner.

Ordinance No. 2006-16 AN ORDINANCE AMENDING SECTION 4(2) OF ORDINANCE NO. 546, ENTITLED AN ORDINANCE PROVIDING FOR A UNIFORM CODE FOR TRAFFIC UPON PUBLIC STREETS OF THE CITY OF JASPER, INDIANA—PARKING PROHIBITED ON CERTAIN DESIGNATED STREETS.

Ordinance No. 2006-16 corrects names of several streets under the parking prohibited section of the code book such as 11th Avenue, 12th Avenue, 12th Street and Habig Street.

Upon motion by Councilmember Ambrose Schitter, seconded by Councilmember Thomas Schmidt and approved 6-0, it was moved to read the ordinance for one reading only. Thereafter, on motion made by Councilmember Raymond Howard, seconded by Councilmember Thomas Schmidt and approved 6-0, it was moved to have the ordinance read by title only. The ordinance was so read. Thereafter, upon motion made by Councilmember Ambrose Schitter, seconded by Councilmember Bradley Seger, it was moved to pass and adopt Ordinance No. 2006-16. The measure passed 6-0.

Ordinance No. 2006-17 AN ORDINANCE AMENDING ORDINANCE NO. 2002-54, ENTITLED AN ORDINANCE ESTABLISHING FEES FOR ACTIVITIES OF THE JASPER DEPARTMENT OF PARKS AND RECREATION.

Ordinance No. 2006-17 changes the fee for baseball/softball clinics at the sports complex from 10% of gross profits to 10% of gross income.

Upon motion by Councilmember Ambrose Schitter, seconded by Councilmember Thomas Schmidt and approved 6-0, it was moved to read the ordinance for one reading only. Thereafter, on motion made by Councilmember Bradley Seger, seconded by Councilmember Ambrose Schitter and approved 6-0, it was moved to have the ordinance read by title only. The ordinance was so read. Thereafter, upon motion made by Councilmember Ambrose Schitter, seconded by Councilmember Thomas Schmidt, it was moved to pass and adopt Ordinance No. 2006-17. The measure passed 6-0.

Resignation. Councilmember Renee Kabrick formerly announced that she would be moving and would not be able to finish her term on the council. Councilmember Kabrick said she would serve through the June 2006 meeting.

Access Road. Councilmember Bradley Seger asked if any progress was being made in building an access road from Mill Street to the Wal-Mart shopping area. Mayor Schmitt stated that the City Engineer had contacted the property owner regarding this matter but did not receive a reply. Schmitt said he would ask the City Engineer to follow up on that issue.

Adjournment

There being no further business to come before the board, a **motion** was made by Councilmember Renee Kabrick and seconded by Councilmember Thomas Schmidt to adjourn the meeting. The motion carried 6-0 and the meeting adjourned at 8:48 p.m.

**William J. Schmitt, Mayor
Presiding Officer**

ATTEST:

Juanita S. Boehm, Clerk-Treasurer

Cynthia Kluemper, Recording Secretary